

REMARKS/ARGUMENTS

Claims 1-25 are presented for Examiner Erezo's consideration. Applicants' attorney thanks the Examiner for his comments. Applicants' attorney notes the Examiner's statement that Claim 18 is allowed over the prior art of record.

Pursuant to 37 C.F.R. § 1.116, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

By way of the Office Action mailed October 4, 2004, Examiner Erezo rejected claims 1-17, 19 and 21 under 35 U.S.C. §102 as allegedly being anticipated by U.S. Patent Number 5,343,857 to Schneider et al.

By way of the Office Action mailed October 4, 2004, Examiner Erezo rejected claims 22-25 under 35 U.S.C. §103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,343,857 to Schneider et al in view of U.S. Patent Number 6,168,758 to Forsberg et al.

In Paragraph 3 of the March 9, 2004 Office Action, Examiner Erezo addresses the Applicants' remarks to the previous Office Action. In his response Examiner Erezo contends that the Schneider et al. reference, teaches a valve capable of being opened by the catheter 23 if the catheter is advanced through the adaptor 35 without attaching the adaptor to the manifold 10.

Applicants recognize the Examiner's position, but traverse it and submit that there is no clear teaching or suggestion that the catheter or catheter tube of Schneider is sufficiently strong, resilient, or otherwise so as to be capable of opening the valve, and in fact may be incapable of doing so. In the absence of a clear teaching or suggestion, it is improper for the Examiner to make such an assumption and to reject claims thereon.

Applicants further respectfully submit that the Examiner has misconstrued or mischaracterized the Schneider reference cited against the present application. For example, the Examiner has contended that Schneider teaches a "valve capable of being opened by the catheter" yet there is no teaching or suggestion that the Schneider catheter be used in that manner. In fact, everything in the Schneider reference teaches to the contrary. That is, the Schneider reference has "a male adaptor formed as part of the accessory device which is designed to be capable of sealing against the port and opening, the normally closed valve allowing interchangeable use of accessory devices while maintaining manifold integrity" (col. 2, lines 56-61). At col. 3, lines 8-11, Schneider states "the invention also includes a male adaptor formed to fit within the accessory device access port and to sealingly engage therewith. Positioning the male adaptor into the access port forces the normally closed valve to an open position." (emphasis added.) Col. 4, lines 5-8 indicate that the male adaptor, referred to generally by the reference numeral 11, which is formed as part of a suction catheter system, is provided for air-tight attachment to the manifold 10. Col. 4, lines 36-38 state that the entire respiratory system is

designed to isolate the patient's lungs from the atmosphere. Col. 5, lines 64-66 indicates that it is the tapered top section 27 of the adaptor 11 which engages the central portion 19 of the valve 16 and forces it toward the interior wall 28 of the port 15. Further, col. 6, lines 6-17 state "as is readily evident, during insertion of the adaptor 11 into the access port 15, the sealing relationship formed between the valve 16 and the adaptor 11 during the initial phase of insertion, prior to opening of the top portion 20 of the valve 16, is intended to completely isolate the interior of the manifold 10 from the atmosphere during attachment of the accessory device. Once completely inserted within the port 15, the tapered top section 27 and the outer surface of the cylindrical central section 31 of the adaptor 11 are engaged in sealing relationship with the top portion 20 and central portion 19 respectively of the valve 16."

The above citations are just some of the instances throughout the Schneider reference which teach that it is the adaptor 11, and more specifically the top section 27 thereof, which engages and opens the valve 16 as it is necessary in Schneider for the adaptor 11 to sealingly engage the valve so that isolation of the manifold may be maintained. Nowhere in Schneider is there the teaching or suggestion that the isolation of the manifold which is one key of the invention of Schneider may be achieved if the seal between the adaptor 11 and the valve 16 is not first achieved. In fact, it is the applicants' contention that the opposite (i.e., no seal and no isolation of the manifold) would occur. That said, in order to practice Schneider in accordance with the teachings to achieve the desired output, where the adaptor is positioned so as to create such a seal, the teachings of Schneider indicate the valve will thus be opened by the adaptor and that the catheter does not do so and is not capable of doing so while the device functions as taught. As stated above, nor is there a suggestion that the catheter or catheter tube can open the valve by itself (i.e., without a separate valve opening adapter or member).

In any event, despite the disagreement as to the appropriateness of the Examiner's rejections above, no reasonable interpretation of the Schneider reference teaches or suggests the present invention as currently claimed. That is, the applicants have amended claims 1 and 11 to reflect that in practice it is the catheter that opens the valve and not a separate valve opening member or adapter as required by Schneider. Furthermore, the claims have been amended to reflect that the catheter, valve, and manifold create a functionally integrated unit. Support for the amendments can be found throughout the application, and more specifically, at least at page 12, lines 12-14 of the application as well as in the drawings. No new matter is believed to have been added by way of the amendments.

Nothing in Schneider suggests or teaches such an integrated unit and certainly not an integrated unit without a separate valve opening member or adapter as discussed above. Even if the Examiner were to somehow construe the separate components of Schneider to be an integrated unit, it is indisputable that Schneider has and requires a separate valve opening member or adapter. The

removal of such a separate valve opening member or adapter from the system of Schneider would defeat entirely the teachings and suggestions of Schneider.

To suggest that Schneider suggests each of the limitations of the present invention would be to ignore the teachings of Schneider and would be to ignore fundamentals of patent practice. Where the cited references fail to teach or suggest each of the claimed elements to one skilled in the art, the rejection must fail. Accordingly, it is respectfully submitted that the Examiner's rejection of Claims 1-17 and 19-21 should be withdrawn.

With respect to the rejection of claims 22-25 over Schneider in view of Forsberg, it is submitted that as discussed above the Schneider patent fails to teach or suggest each and every element which is present in the claims of the present invention, and Forsberg fails to provide a teaching or suggestion of the elements which Schneider fails to teach or suggest. Where the cited references fail to teach or suggest each of the claimed elements to one skilled in the art, the rejection must fail. Accordingly, it is respectfully submitted that the Examiner's rejection of Claims 22-25 should be withdrawn.

Applicants respectfully request the rejections of the claims under 35 U.S.C. §§ 102 and 103 be withdrawn in light of the preceding amendments and remarks.

For the foregoing reasons, the application and claims are believed to be in condition for allowance and such action is respectfully requested. However, should any questions arise with regard to this matter the Examiner is encouraged to contact the undersigned at (770)-587-7183. Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

Respectfully submitted,

CRUMP ET AL.

By:



William W. Letson

Registration No.: 42,797

CERTIFICATE OF FACSIMILE

I, Issa Evans, hereby certify that on December 6, 2004, this document is being faxed to the United States Patent and Trademark Office, central facsimile machine at (703) 872-9306.

By:



Issa Evans